

## **High Profile Malpractice Insurance Case Reaches State Corporation Commission**

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RICHMOND, VA, (April 24, 2003) Three Richmond-based malpractice insurance companies Thursday appealed to the State Corporation Commission seeking to overturn actions of Virginia state officials, which they claim are harmful to the best interests of thousands of doctors, lawyers and counselors in Virginia and other states.

The appeal seeks to preserve the assets of Richmond-based Doctors Insurance Reciprocal (DIR), American National Lawyers Insurance Reciprocal (ANLIR) and The Reciprocal Alliance (TRA), to protect the thousands of medical and legal professionals nationwide who depend on the companies for their malpractice coverage. Without the requested action by the SCC, the three companies will collapse and policyholders may be left to pay for millions of dollars in malpractice claims and settlements out of their own pockets.

The three companies assert that their assets could be depleted as a result of decisions made by Virginia Special Deputy Receiver Mel Dillon in Virginia's receivership of Richmond-based Reciprocal of America (ROA), a financially-troubled malpractice insurer and re-insurer, and its management company, The Reciprocal Group (TRG). The Virginia-chartered firms were taken into receivership by Virginia Insurance Commissioner Al Gross on January 28.

DIR, ANLIR and TRA are all structured as Risk Retention Groups chartered in Tennessee and have no employees of their own. The Tennessee-chartered companies are operated and managed by TRG in Richmond and are reinsured by ROA. When ROA became insolvent, Dillon determined that he would no longer honor the reinsurance claims of DIR, ANLIR and TRA, forcing the three companies into receivership in Tennessee.

The appeal was filed by the Tennessee Special Deputy Receivers of DIR, ANLIR and TRA, who are trying to stabilize the companies and protect their policyholders. They contend they have been blocked in that effort by Dillon, who took control of the premises of all five companies, including the files and personnel of all the companies, and for more than two months has denied Tennessee officials the crucial access to the records of DIR, ANLIR and TRA and the employees who ran those companies. More recently, Dillon has taken control of \$57 million in a Wachovia Bank trust account reserved for DIR, ANLIR and TRA.

The appeal asserts that Dillon is improperly paying claims against ROA, and thus depleting assets that may belong to the policyholders of the companies. The Tennessee Special Deputy Receivers claim all five companies constituted a single business

enterprise. Therefore, they argue, the receivership proceedings established to operate the troubled companies should now be treating all policyholders alike.

Tennessee Insurance Commissioner Paula A. Flowers, who by Tennessee law is the receiver for DIR, ANLIR and TRA, said the companies' policyholders need immediate relief from the SCC to preserve the assets of the commingled companies and to provide complete, unfettered access to company records and employees.

"We have been allowed very limited access to the employees administering these companies and very limited access to the books and records of these three companies, despite the fact that they are chartered in Tennessee. The ROA Special Deputy knows that we have very serious responsibilities under Tennessee law," said Commissioner Flowers. "The chances for the companies' rehabilitation are dwindling because we've been denied the access that would allow us to understand the condition of these companies."

The Tennessee receivers contend that all of the companies were effectively a single business, sharing key officers, and run by the same corps of employees on the same premises. ROA was at one time one of the largest hospital malpractice insurers in the United States. Doctors Insurance Reciprocal (DIR), is a medical malpractice insurer for physicians, the American National Lawyers Insurance Reciprocal (ANLIR), is a legal malpractice insurer and The Reciprocal Alliance (TRA) is a malpractice insurer which insured 27,000 counselors in the United States. The three Tennessee chartered insurers filing the appeal have about 10,000 Virginia policyholders.

Commissioner Flowers said she fears that the premium dollars paid to DIR, ANLIR and TRA are being used solely to pay the claims of the direct policyholders of ROA, and that immediate SCC action is needed to protect those insureds.

"The funds paid by policyholders of Tennessee companies should not be used to pay any claims until we can review all of these documents," Commissioner Flowers said. "Otherwise, there is a risk that paying the claims of ROA will prematurely deplete the funds of the other three companies sharing this common management arrangement, to the detriment of thousands of professional attorneys, healthcare providers and school counselors in Virginia and other states who will effectively no longer have malpractice coverage."

The Tennessee officials are represented in Virginia by Reed Smith, LLP, a large international business law firm. Lane Kneeder, one of the Reed Smith attorneys representing the Tennessee officials, said "because of the nature of the agreements between the five companies and the manner in which they were operated, we think ROA does not have the kind of relationship with DIR, ANLIR and TRA which would entitle it to assign them the low priority status of creditors. Rather, we believe claims against policyholders of all four companies should be treated alike."

In insurance company receivership proceedings, payment of claims by policyholders receives higher priority than payment of claims by creditors. If funds are inadequate to pay all obligations, creditors may be paid little or nothing.

Tennessee is also pursuing emergency relief on Dillon's seizure of \$57 million from the trust account of a Bermuda reinsurer, First Virginia Reinsurance, Ltd. The funds were dedicated to the three Tennessee-chartered companies to pay claims against their policyholders. "These funds were being held in a trust account specifically for the benefit of the policyholders of DIR, ANLIR and TRA," Kneedler said.

The brief points out that after Dillon took over the premises, files and personnel of The Reciprocal Group, a significant number of personnel were fired. In order to receive one month's severance pay, terminated personnel were required to sign a confidentiality agreement preventing them from speaking to or providing information to Tennessee officials.

"These confidentiality contracts are impeding the efforts of Tennessee officials to develop accurate understandings of the affairs of DIR, ANLIR and TRA which harms these companies' policyholders," said Walter Marston, another Reed Smith attorney working on the case.

Today's suit asks the SCC to stop payments from ROA to ROA's claimants and to quickly establish processes and procedures so that insureds of the four companies will be treated uniformly with respect to payment of claims. "We have a responsibility to protect the interests of the thousands of insureds of the Tennessee companies whose outstanding claims may never be paid if this is not promptly resolved," Commissioner Flowers said. "It is imperative that we act quickly, before the money that may be available is spent by ROA."

A full copy of the brief in this case is available on the Tennessee Dept. of Commerce and Insurance's website:  
<http://www.state.tn.us/commerce/insurance/reciprocal/pdf/ROAAppeal.pdf>.

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